

1 REIDUN STRØMSHEIM # 104938
2 STROMSHEIM & ASSOCIATES
3 Four Embarcadero Center, 39th Floor
4 San Francisco, California 94111
5 Telephone: (415) 989-4100
6 Fax: (415) 989-2235
7 rstromsheim@stromsheim.com
8 jcinq-mars@stromsheim.com

9 Attorneys for Trustee,
10 CAROL W. WU

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 In re:

14 DARWYN MICHAEL SOUTAS

15 SSN xxx xx 5210

16 Debtor

Case No. 09-54261 ASW

Chapter 7

Date: December 13, 2013

Time: 1:45 p.m.

Judge: Hon. Arthur S Weissbrodt

Location: Courtroom 3020

17 **NOTICE OF OBJECTION AND OBJECTION TO CLAIM**
18 **(Claim No. 19 - Internal Revenue Service)**

19 TO THE INTERNAL REVENUE SERVICE OF THE UNITED STATES.:

20 NOTICE IS HEREBY GIVEN that Carol W. Wu ("Trustee"), trustee of the above
21 referenced bankruptcy estate, objects to the priority claim for taxes in the amount of \$180,380.38
22 ("Claim No. 19") filed by the Internal Revenue Service ("IRS") on February 28, 2013. A copy of
23 Claim No. 19 is attached hereto as Exhibit "A".

24 **BACKGROUND**

25 1. An Order for relief under Chapter 11 of Title 11 of the United States Code was
26 entered herein pursuant to a voluntary petition filed by the Debtor on June 1, 2009. The case was
27 converted to Chapter 7 on June 6, 2011, and Carol W. Wu is the duly appointed, qualified and
28 acting trustee of the Debtor's estate.

2. The Debtor elected to file a short year May 30, 2009 income tax return under his social security number as allowed under IRC Section 1398. The Debtor also appears to have properly included all post-petition earnings from his insurance brokerage business in 2010 and 2011 Chapter 11 bankruptcy estate tax returns until conversion on September 6, 2011 using a separate bankruptcy estate federal identification number. The Bankruptcy Code requires that all earnings of the Debtor in a chapter eleven proceeding are property and earnings of the chapter eleven bankruptcy estate, not the individual Debtor separate and apart from his chapter eleven estate.

3. The Internal Revenue Service has indicated that the 2010 and 2011 bankruptcy estate tax returns have been filed and all tax liabilities paid in full. No claim has been filed for the bankruptcy estate under its separate federal identification number. See Declaration of Michael Gabrielson ("Gabrielson Declaration").

4. The Internal Revenue Service filed Claim 19 for perceived administrative taxes against the debtor under his social security number for the periods May 30, 2009 and calendar years 2010, 2011 and 2012.

REASONS FOR OBJECTION

First: The claim includes the short year ended May 30, 2009 tax liability which is a priority pre-petition tax claim, not an administrative claim of the Chapter 11 estate. This amount should be re-characterized as a pre-petition claim.

Second: The claim includes a tax liability for the calendar tax year 2012, a tax period occurring after the case was converted to chapter seven on September 6, 2011. Any personal tax liability for the Debtor under his social security number after September 6, 2011 would be taxes on income belonging to the debtor, not the Chapter 7 bankruptcy estate.

Third: The 2010 and 2011 tax assessments on the claim represent an erroneous double taxation of insurance brokerage income already included in properly filed 2010 and 2011 bankruptcy estate tax returns under the separate estate federal identification number.

The Bankruptcy Unit of the Internal Revenue Service has confirmed that the 2010 and 2011 taxes per their claim are based on the same Forms 1099 for debtor's insurance brokerage

1 business which were included in the bankruptcy estate tax returns under the separate federal
2 identification number. While it is possible the Forms 1099 incorrectly used the Debtor's social
3 security number, this was factually income of the bankruptcy estate required to be reflected on
4 bankruptcy tax returns, not personal income of the debtor separate and apart from his chapter
5 eleven bankruptcy estate. No separate personal tax returns have been filed by the Debtor under
6 his social security number which would explain the amounts included in this claim. See
7 Gabrielson Declaration.

8 Accordingly, the Trustee objects to this claim in any amount.

9 DATED: November 11, 2013

10 STROMSHEIM & ASSOCIATES

11
12 By /s/ Reidun Strømsheim
13 ATTORNEYS FOR CAROL W. WU, TRUSTEE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Request for Payment of Internal Revenue Taxes

(Bankruptcy Code Cases - Administrative Expenses)

Department of the Treasury/Internal Revenue Service

United States Bankruptcy Court for the NORTHERN
District of CALIFORNIA

In the Matter of: DARWYN MICHAEL SOUTAS
14120 BLOSSOM HILL ROAD
LOS GATOS, CA 95032

Fiduciary:



Case Number

09-54261

Type of Bankruptcy Case

CHAPTER 7A

Converted from

7N on 01/16/2013

Date of Petition

06/01/2009

Creditor Number

10023056

Insolvency Group 4 55 So Market St M/S HQ5430
San Jose, CA 95113

1. The undersigned, whose business address is _____, is the agent of the Department of the Treasury, Internal Revenue Service, and is authorized to make this request for payment on behalf of the United States.
2. Request is made for payment of taxes and any interest or penalty due under the internal revenue laws of the United States, as shown below.
3. The ground of liability is taxes due under the internal revenue laws of the United States.

Administrative Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Tax Due	Interest Due	Penalty Due	Balance Due
XXX-XX-5210	INCOME	05/30/2009	\$44,226.00	\$882.35	\$9,272.03	\$54,380.38
XXX-XX-5210	INCOME	12/31/2010	\$42,000.00	\$0.00	\$0.00	\$42,000.00
XXX-XX-5210	INCOME	12/31/2011	\$42,000.00	\$0.00	\$0.00	\$42,000.00
XXX-XX-5210	INCOME	12/31/2012	\$42,000.00	\$0.00	\$0.00	\$42,000.00
			<u>\$170,226.00</u>	<u>\$882.35</u>	<u>\$9,272.03</u>	<u>\$180,380.38</u>

Total Amount Due:

\$180,380.38

1 THE ABOVE LIABILITY HAS BEEN LISTED AS A POTENTIAL LIABILITY FOR THE DEBTOR BECAUSE THE RETURN HAS NOT BEEN FILED. AS SOON AS THE DEBTOR FILES THE RETURN WITH THE IRS AS REQUIRED BY LAW THIS CLAIM WILL BE ADJUSTED TO REFLECT THE ASSESSED LIABILITY.

The amount due includes interest and penalty computed to 03/31/2010. Compound interest will accrue at the rate established under IRC Section 6621(a) and late payment penalty will be charged under IRC Section 6651. If the claim is paid after 03/31/2010, contact CHERIE DERRICK at (408) 817-6531 for the current balance.

Penalty for Presenting Fraudulent Claim - Fine of not more than \$5,000 or imprisonment for not more than 5 years or both - Title 18, U.S.C., Section 152.	Signature /s/ CHERIE DERRICK	Date 02/27/2013
	Title Bankruptcy Specialist	Telephone Number (408) 817-6531

Form 6338 - A(C)